

MEETING MINUTES, BOARD OF ZONING APPEALS, AUGUST 13, 2007

Present: Phil Tinkle, Mike Campbell, Shan Rutherford, Shawna Koons-Davis, City Attorney, William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

PREVIOUS MINUTES

July 9th – Tinkle noted one correction, at the bottom of page 6 the word “withdraw” should be amended to read “withdrawal”. Rutherford moved to approve the minutes as amended, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

FINDINGS OF FACT

Docket V2007-006 – Dimensional Variance – 444 N. Emerson Avenue
Rutherford moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-006, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2007-011 – Dimensional Variance – Turtle Creek Management
Campbell moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-011, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2007-012 – Dimensional Variance – CVS
Rutherford moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-012, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

OLD BUSINESS

Docket V2007-013 – Dimensional Variance – Aldi – located at 486 E. Stop 18 Rd. – request to allow a 50 sq. ft. monument ground sign with a height of 9’11” – Aldi, owner; Branham Sign, applicant, representing.

Tom Branham, Branham Sign, came forward and was sworn.

Variance request is for a ground sign measuring taller than 4’ in height.

Petitioner addressed the criteria as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The predominate use of the property is for semi-tractor traffic, which would be able to easily see over the proposed sign. Due to the proposed location, the sign should not interfere with sight lines associated with passenger automobile traffic.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The property is surrounded on three sides by industrial development or undeveloped property zoned for industrial development. The only residentially zoned property is separated from this parcel by a railroad and is improved with an agricultural use. The sign should not affect adjacent property in any way dissimilar that the effect of a sign constructed in accordance with the Ordinance requirements.

3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The current Sign Code does not provide for the design of signage consistent with the character and scale of the use supported by the sign. As a result of this "one size fits all" approach, signage could be obtrusive in certain areas, while understated in others. In this case, while the sign would be conservative as envisioned by the Sign Code, the height limit reduces the effectiveness of the sign given the industrial context of the area and the scale of the supported building.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** The property is not located within the airspace overlay district and is located approximately 10,530 feet from the runway of the nearest public use airport.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a dimensional variance to Aldi for a monument ground sign with a height of 7'5 1/2" located at 486 E. Stop 18 Rd., seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-013, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2007-014 – Dimensional Variance – Greenwood Christian Academy – located at 835 Worthville Rd. – request to allow a lighted 69 sq. ft. pole sign (15.625' high, 6' from bottom of sign to grade) for school and approve relocating it to a residential zone – Greenwood Christian Academy, Inc., petitioner; Sign Solutions, Inc., applicant, representing.

Mike Pflum, Sign Solutions; David Kincheloe, Grwd. Christian Academy; and members of the audience were sworn.

Mr. Pflum distributed additional information regarding the proposed sign for the Board's review. Their request is for a 100 sq. ft. sign. It is proposed to be an EMC board (electronic message board), as well as having lighted headers and footers. They are proposing to turn the sign off between 11 p.m. and 6 a.m. Message portion of the sign will be used mainly for text information. The sign does allow for animation. The proposed location will be temporary until Worthville is straightened at a later date by the city. At that time the sign will be moved to its permanent location.

David Kincheloe, Grwd Christian Academy, came forward. The sign will be angled away from surrounding residential areas, thereby helping to direct illumination from those properties. He feels the proposed future commercial area will be a buffer between the sign and the residences.

The floor was opened for remonstrance. Scott Tanner, Attorney, representing Pines of Greenwood Homeowners Association, came forward. His clients are concerned about the message board portion of the sign, brightness of it, as well as the size of the proposed sign. He addressed two areas of the sign code which deal with the brightness of signs. He has read the staff report and his client is in support of the senior planner's comments. The Pines residents are not opposed to a standard LED sign, however, they are against the proposed EMC sign due to the brightness issue. Tanner has reviewed the proposed final location of the sign and he suggested that the final location should be

within the island area to the front of the property so that it would be flashing away from the residential areas. Tanner indicated that construction of the sign has already begun. Rebecca Hoffman came forward. She is a board member at Greenwood Christian Academy. Tinkle informed her that this is the time for remonstrators to speak. He indicated she could speak in favor of the variance during the rebuttal period. Brad Christian, 3142 Longleaf Dr., came forward. The Academy's parking lot abuts his property. He is against the sign due to the proposed EMC portion.

Pflum came forward for rebuttal. He stated that due to time restraints, preliminary construction of the sign has been started. Pflum said that the EMC portion of the sign will not be as bright as examples that have been observed by the homeowners association. The brightness can be controlled. He then addressed the positioning of the sign. He requested that the sign be approved as requested.

The petitioner offered the following responses to the statutory criteria:

Variance Request #1 – to allow 6' from bottom of sign to grade

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The sign, as designed, would not impede the visibility of traffic along Worthsville Road.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The affect of this proposed sign on property values would not be dissimilar to that should the sign be constructed in accordance with the requirements of the ordinance.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The residential context of the area would dictate a more conservative approach to signage that is envisioned by the ordinance in a C-1 District; therefore, to minimize the height of the sign, this variance is appropriate.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** The property is not located within the Airspace Zoning District and is located approximately 16,740 feet from the runway of the nearest public use airport.

Variance Request #2 – to allow an intensely lighted sign

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** Petitioner feels this type of sign is needed in order to offer a vast variety of information to students and the public alike.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** This sign will not only identify the facility but also transmit valuable information to the community as well. Petitioner offers provision to 1) Dim the brightness of the images based on a dusk to dawn sensor and 2) Schedule the sign to be turned off completely during very late evening and very early morning hours.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Petitioner feels they must present a considerable amount of information to the community to be successful and to reach their potential. They wish to do so without putting the sign in a location that is difficult to see and read or one that creates a potential obstruction to motorists or visitors on or near the facility.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** The property is not located within the Airspace Zoning District and is located approximately 16,740 feet from the runway of the nearest public use airport.

Variance Request #3 – to provide for the relocation of the sign upon the construction of Worthsville Road to an R-2 district with a sign area of 100 sq. ft.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The ordinance has been crafted to encourage modest signs within residential areas to ensure design of signage is not disruptive to the general welfare of the residential area wherein the sign is located.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** Relocation of the sign once roadwork is completed will not affect the use and value of adjacent properties since the sign had already existed and is only being moved to road relocation.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Since the sign is merely being relocated at the time the roadway is moved it would result in practical difficulty since it has been allowed to exist prior to the road construction.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** The property is not located within the Airspace Zoning District and is located approximately 16,740 feet from the runway of the nearest public use airport.

Campbell inquired if the location presented in the paperwork this evening differed from what was received in the packet? It does and that illustration would be the final location, however, only if Worthsville Rd. is straightened in the future. If the road work never takes place, the sign will remain in the location proposed as the temporary location.

Rutherford inquired about the size of the animated section of the sign. It will measure 44" x 10'. He is concerned not only about the existing residential areas but also those proposed to the north of Worthsville Road.

Campbell stated he felt that maybe the hardship of practical difficulty has not been met due to the fact that if the proposed sign is not approved (i.e. the EMC portion) a different type sign could be used. Kincheloe responded by stating that the academy would like to use the current technology of today (i.e. EMC board). He also stated that they are requesting the setback be to ordinance minimum of 10', rather than the 30' proposed in the staff report.

Variance Request #1 – to allow 6' from bottom of sign to grade

Campbell moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow a pole sign with 6' from bottom of sign to grade for Greenwood Christian Academy located at 835 Worthville Rd., seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Variance Request #2 – to allow an intensely lighted sign

Rutherford moved that based on the evidence presented that the Board **deny** the granting of a dimensional variance to allow an intensely lighted sign for Greenwood Christian Academy located at 835 Worthville Rd., seconded by Campbell. Vote for approval of the motion to **deny** was unanimous, 3-0. **Motion carried.**

Variance Request #3 - to provide for the relocation of the sign upon the reconstruction of Worthsville Road in an R-2 district with a sign area of 100 sq. ft.

Rutherford moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to provide for the relocation of the sign upon the reconstruction of Worthsville

Road in an R-2 district with a sign area of 100 sq. ft. for Greenwood Christian Academy located at 835 Worthville Rd., seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving a pole sign with 6' from the bottom of the sign to the grade and to provide for the relocation of the sign when Worthville Rd. is reconstructed and denying an intensely lighted sign for Variance Petition Number V2007-014, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

NEW BUSINESS

Docket V2007-015 – Dimensional Variance – Dr. Greg Hardin, located on lot 12, Greenwood Industrial Airpark – request to reduce sideyard setback from 45' to 30', Dr. Greg Hardin, applicant; Greenwood Industrial Airpark, owner; Van Valer Law Firm, representing.

Joe Van Valer and Brandi Foster, Van Valer Law Firm; and Drs. Greg and Chris Hardin; came forward and were sworn.

I-65 Corridor Overlay zone, reduction of sideyard setback requirement for building from 45' to 30'. Drainage easement on property that is hindering placement of building and future building that is proposed.

The petitioner addressed the statutory criteria as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The request seeks to establish a professional office complex on property zoned for that use. The reduced setback would still maintain a 30-foot separation between the building and the property line, which exceeds current standards for fire safety.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The proposed building would still be set back 30' from the property line and the character of the area is a mixture of professional offices, health services and industrial development. The proposed use would be consistent with the emerging development pattern.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The property is encumbered with a large, platted, legal drain easement along the northern property boundary and the proposed development pattern, though not consistent with the letter of the ordinance, is consistent with the spirit of the ordinance as it relates to setbacks for commercial outlots within the I-65 Overlay District.

4. **Criteria:** The proposed structure is within the Horizontal Surface Area of the Airspace Overlay District and is approximately 986 feet from the runway of the nearest public use airport. The Board of Aviation Commissioners and the Federal Aviation Administration were notified on June 5, 2007, of this proposed construction via FAA form 7460-1.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a dimensional variance to allow a reduction in setback from 45' to 30'

With the following condition, to which the Petitioner agreed:

- 1) A "Determination of No Hazard to Air Navigation" by the FAA shall be submitted with a petition for site development plan approval prior to the issuance of a Land Alteration Permit.

Seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-015, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

City Attorney Koons-Davis introduced the new Assistant City Attorney, Jay Isenberg.

Campbell moved to adjourn, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.** Meeting was adjourned at 7:25 p.m.

JANICE NIX
Recording Secretary

PHIL TINKLE
Chairman